UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

CHRISTOPHER D. GRIFFITH and DAVID : SPECIALE, on behalf of themselves and all others : similarly situated. :

USDC SDNY
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ELECTRONICALLY FILED
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DATE FILED: February 28, 2014

Plaintiffs,

12 Civ. 1117 (PAC)

-against-

<u>ORDER</u>

FORDHAM FINANCIAL MANAGEMENT, INC. : and WILLIAM BAQUET, :

Defendants

HONORABLE PAUL A. CROTTY, United States District Judge:

Plaintiffs Christopher D. Griffith and David Speciale (collectively, "Plaintiffs") bring this action against Fordham Financial Management, Inc. ("Fordham"), their former employer, and William Baquet, Fordham's president and chief executive officer, (collectively, "Defendants") alleging violations of the Fair Labor Standards Act ("FLSA") and the New York Labor Law ("NYLL"). On February 21, 2014, Defendants moved to compel Plaintiffs to produce tax returns and documents relating to other securities firms where they were employed. The Defendants' motion is DENIED.

Plaintiffs' tax returns are not discoverable in this action. To compel discovery of tax returns, the party seeking discovery must establish (1) that the documents are relevant to the subject matter of the case, and (2) that there is a compelling need for the documents because the information contained therein is not otherwise readily obtainable. *See Melendez v. Primavera Meats, Inc.*, 270 F.R.D. 143, 145 (E.D.N.Y. 2010); *see also Smith v. Bader*, 83 F.R.D. 437, 438 (S.D.N.Y. 1964). Defendants cannot fulfill either requirement. First, Defendants claim that

Plaintiffs' tax returns are relevant to demonstrate that Plaintiffs were "exempt from the FLSA as

independent contractors." See Letter from David A. Schrader to Hon. Paul A. Crotty, Feb. 21,

2014, at 2. But Fordham paid the Plaintiffs on W-2s as employees. Although courts have held

that employee tax returns may be relevant as to whether a worker is an independent contractor.

see id. (collecting cases), those employees were paid on 1099s. Second, even if the tax returns

are relevant, Defendants have not demonstrated that the information is not otherwise readily

obtainable. See Melendez, 270 F.R.D. at 145 (denying discovery of tax returns when

"[i]nterrogatories, demands for non-tax return documents, and/or inquiries during depositions"

were not used to obtain the information).

Defendants also seek access to documents relating to Plaintiffs' employment at other

securities firms because they "may be probative as to the hours actually worked at Fordham."

See Letter from David A. Schrader to Hon. Paul A. Crotty, Feb. 21, 2014, at 3. The Court

disagrees. Plaintiffs' work at other firms has no bearing on whether Fordham properly

compensated Plaintiffs for their work at Fordham—the actual issue in this case. As a result, the

Court holds that Defendants are not entitled to discovery of Plaintiffs' tax returns or documents

relating to other employment. The Defendants' motion to compel discovery is therefore

DENIED.

Dated: New York, New York

February 28, 2014

SO ORDERED

United States District Judge

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